

NATURAL RESOURCE COMMISSION[571]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 23, “Wildlife Habitat Promotion with Local Entities Program,” Iowa Administrative Code.

The proposed amendments clarify the types of projects that are eligible to be cost-shared, when applications are due, how the applications are evaluated, and how the applications are scored.

Any interested person may make written suggestions or comments on the proposed amendments on or before April 27, 2010. Written comments may be directed to the Wildlife Bureau’s Web site at www.iowadnr.com or may be sent to the Wildlife Bureau Chief, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-6794. Persons who wish to convey their views orally should contact the Wildlife Bureau at (515)281-5034 or at the Wildlife Bureau offices on the fourth floor of the Wallace State Office Building.

There will be a public hearing held via the Iowa Communications Network on April 27, 2010, from 6 to 9 p.m. Interested persons should contact the Department at (515)281-5034 for a list of hearing locations or go to the Department’s Web site at www.iowadnr.com. At the hearings, persons may present their views either orally or in writing. Participants will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any persons who intend to attend the public hearing and have special needs, such as those related to hearing or mobility impairments, should contact the Department of Natural Resources and advise of specific needs.

These amendments are intended to implement Iowa Code section 483A.3.

The following amendments are proposed.

ITEM 1. Adopt the following new definition of “Waiver of retroactivity” in rule **571—23.1(483A)**:
“*Waiver of retroactivity*” means approval by the department for an applicant to purchase land prior to the next round of wildlife habitat fund application reviews. The waiver allows the applicant to remain eligible for the next round of wildlife habitat funds when extenuating circumstances exist that require an immediate purchase of the subject property by the applicant or a third party that will hold the property until funds become available to the applicant.

ITEM 2. Amend rule 571—23.5(483A) as follows:

571—23.5(483A) Eligibility for cost-sharing assistance. No project shall be eligible for cost sharing unless it is specifically approved by the commission, or the applicant has received a written waiver of retroactivity from the director, prior to its initiation. A project shall not be eligible for cost sharing unless public hunting and trapping will be allowed; however, the review and selection committee may recommend for commission approval projects with restrictions on hunting and trapping under exceptional circumstances, such as waterfowl refuges. Fees charged for recreational purposes will not be allowed on land purchased or developed with wildlife habitat funds. Wildlife habitat promotion funds shall not be used to fund mitigation lands or banks, or other lands, to satisfy mitigation requirements. Only the following types of project expenditures will be eligible for cost-sharing assistance.

23.5(1) Acquisition projects. Lands or rights thereto to be acquired in fee or by any other instrument shall be appraised by a competent appraiser and the appraisal approved by the department

staff. Applicants whose applications have been approved for funding must submit an appraisal that meets the Uniform Appraisal Standards for Federal Land Acquisitions. The appraisal ~~requirement~~ requirements may be waived when the staff determines that ~~it is~~ they are impractical for a specific project. Cost sharing will not be approved for more than 75 percent of the approved appraised value. Acquisition projects are eligible for either cost sharing by direct payments as described in subrule 23.12(7) or by reimbursement to local entities.

When a county receives or will receive financial income directly or indirectly from sources that would have been paid to the previous landowner as a result of a purchase agreement or other title transfer action, 75 percent of that income will be transferred to the department unless the grantee has demonstrated and committed to habitat development projects or additional acquisitions on the project site to be funded from the income received. The project review and selection committee must recommend, and the director and commission must approve, plans for the expenditure of income. In the absence of acceptable wildlife habitat development or acquisition plans, the county will transfer 75 percent of income received to the department as it is received. The department will credit that income to the county apportionment of the wildlife habitat stamp fund as described in subrule 23.2(1). The schedule of those reimbursements from a county to the state will be included in the project agreement.

23.5(2) Development projects. Eligible expenditures for development projects shall include, ~~but not be limited to, contracts, the purchase of materials and supplies, rentals and extra labor hired only for the specific project~~ seeding and planting of habitat to support or enhance the wildlife area. Requests to purchase equipment will not be approved. Donated labor, materials and equipment use, and force account labor and equipment use shall not be eligible for cost-sharing assistance. (Force account means the agency's own labor and equipment use.) Development projects are limited to lands legally controlled by the grantee for the expected life of the project. Development projects are eligible only for reimbursement of reasonable costs actually incurred and paid by the public agency.

23.5(3) Enhancement projects. For purposes of this rule, "enhancement" shall be considered to be synonymous with "development."

This rule is intended to implement the provisions of Iowa Code section 483A.3.

ITEM 3. Amend subrules 23.6(2) and 23.6(3) as follows:

23.6(2) Time of submission. Applications for funds shall be reviewed and selected for funding during January and July of each year. Applications must be received in acceptable form by the Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319, by the close of business on the last business day of May for consideration at the summer review and the last business day of November for the winter review. Changes to grant applications must be submitted to the department no later than 4 p.m. the day prior to the committee review date. Upon timely notice to eligible recipients, additional selection periods may be scheduled if necessary to expedite the distribution of these funds. In emergencies, local entities can obtain a waiver so that acquisition projects may be approved for retroactive payments, provided that funds are available and the project meets all other criteria.

23.6(3) Local funding. By signing the application, the applicant agency is certifying that all required match has been identified and is committed and available for the project. An applicant shall certify ~~that it has committed its share of project costs, that these funds are available, in writing that it has the 25 percent match committed and available, by signing on the signature block provided on the form,~~ and shall state the means of providing for the local share. All necessary approvals for acquisition and financing shall be included with the application. All financial income received directly or indirectly from sources that would have been paid to the previous landowner as a result of a purchase agreement or other title transfer action will be completely documented in the application.

ITEM 4. Amend subrule 23.7(1) as follows:

23.7(1) Review and selection committee. A review and selection committee, hereinafter referred to as the committee, composed of ~~two persons~~ one person appointed by the director to represent the department, ~~one of whom shall be~~ and designated by the director as chairperson; and ~~three~~ four persons appointed by the director to represent county conservation boards shall determine which grant applications and amendment requests shall be selected for funding.

ITEM 5. Amend subrule 23.7(3) as follows:

23.7(3) Application rating system. The committee will apply a numerical rating system to each grant application which is considered for fund assistance. The following criteria, with a weight factor for each, will be considered:

Wildlife habitat needs	2
Existing or potential habitat quality	3
Cost-effectiveness	1 if at least 35 percent less than appraised amount 2 if at least 45 percent less than appraised amount
Species diversity	1

Each criterion will be given a score of from 0 to 10 which is then multiplied by the weight factor. Three additional criteria will be considered in the rating system:

a. Prior assistance. Any applicant who has never received a prior grant for acquisition of land will be given a bonus of 5 points.

b. Active projects. Any applicant who has one or more active projects at the time of application rating will be assessed 5 penalty points for each one that has not been completed by the date specified in the project agreement. ~~An active project shall cease to be active when all acquisition or development or both have been satisfactorily completed and an acceptable final reimbursement billing has been submitted to the department.~~ A project is deemed closed after the project has had a final inspection, all funds have been paid and, in the case of acquisition, the title has been transferred from the seller.

c. Urgency. Projects may be given 1 or 2 bonus points if there is a strong urgency to acquire lands which might otherwise be lost.

All points will be totaled for each application, and those applications receiving the highest scores will be selected for fund assistance to the extent of the allotment for each semiannual period, except that any project scoring a total of not more than 45 points will not be funded.

ITEM 6. Adopt the following **new** subrule 23.7(6):

23.7(6) Rating of scores for tie breakers. If two or more projects receive the same score, the committee shall use the points awarded to existing or potential habitat quality to determine which project has a higher rank. If after considering the existing or potential habitat quality points the project scores remain tied, the committee will then consider the points awarded for species diversity. If after considering the species diversity points the project scores remain tied, the committee will then consider the points awarded for wildlife habitat needs.

ITEM 7. Rescind subrule **23.14(3)**.

ITEM 8. Renumber subrule **23.14(4)** as **23.14(3)**.